

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600

www.montgomerycountymd.gov/content/council/boa/index.asp

Case Nos. S-420-H and A-6279

PETITIONS OF HOLY CROSS HOSPITAL

OPINION OF THE BOARD

(Opinion Adopted July 15, 2009 and September 9, 2009)
(Effective Date of Opinion: September 18, 2009)

Case No. S-420-H is an application for a modification of the Holy Cross Hospital special exception to permit a new, seven-story "South Patient Tower," an expanded North Garage and associated upgrades. The application also seeks a parking setback waiver to allow approximately 10 parking spaces within the required setback from the southern and eastern property lines. Case No. A-6279 is a related application, which was consolidated with the special exception, for variances of 128 feet from the required rear-yard setback and of 17.4% above the 35% maximum building coverage standard.

The Hearing Examiner for Montgomery County held hearings on the applications on March 27, 2009 and April 13, 2009, closed the record on June 12, 2009, and on June 22, 2009 issued a Report and Recommendation for approval of the applications.

The subject property is Lot N607, located at 1500 Forest Glen Road, Silver Spring, Maryland, 20910 in the R-60 Zone.

Decision of the Board:	Special Exception Modification and Variances Granted , Subject to Conditions Enumerated Below.
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The Board of Appeals considered the Hearing Examiner's Report and Recommendation at its Worksession on July 15, 2009. On August 20, 2009, the Board received a letter from C. Robert Dalrymple, Esquire, and Heather Dlhopsky, Esquire, on behalf of Holy Cross Hospital. Mr. Dalrymple and Ms. Dlhopsky request that the one-year validity period of the variances granted in Case No. A-6279 be extended to match the two-year special exception validity period inasmuch as the variances were granted in support of implementation of the special exception. The Board of Appeals considered this request at its Worksession on September 9, 2009. After careful consideration and review of the record in the case, the Board adopts the Hearing Examiner's Report and Recommendation with a revision to Condition 11, **grants** the

requested modification including the parking waivers, **grants** the requested variances, and extends the validity period of the variances to September 18, 2011, subject to the following conditions:

1. The Petitioner shall be bound by all of its testimony and exhibits of record, and by the testimony of its witnesses and representations of counsel to the extent that such evidence and testimony are identified in the Hearing Examiner's report and in the Opinion of the Board.
2. The number of patient beds shall be limited to 408 in-patient beds as approved for the Petitioner by the Board of Appeals in S-420-E on May 4, 2001.
3. The expansion of the south patient tower shall be limited to 219,194 square feet of gross floor area and 180 in-patient beds, based on the Site Plan (Exhibit No. 81(e)).
4. The height of the south patient tower shall not exceed seven stories and 128 feet in height, based on the Site Plan (Exhibit No. 81(e)).
5. The north parking garage shall have four levels and 95,000 square feet, based on the Site Plan (Exhibit No. 81(e)).
6. Any amendments to the landscape plans, outside of the Scenic Easement Area, shown on Exhibit, must be submitted to and approved by the Board of Appeals as provided for in Section 59-G-1.3(c) of the Zoning Ordinance.
7. Lighting at the side and rear property lines must not exceed 0.1 foot-candle level allowed by the special exception, as shown on the Photometric and Lighting Plan (Exhibit No. 77(e)).
8. The median for the east access drive shall be constructed to extend beyond the crosswalk to the Forest Glen Road thru-lane curb line, with a break for the crosswalk, as the existing west entrance from Forest Glen Road is now configured, as shown on the Site Plan (Exhibit No. 81(e)).
9. Pedestrian ramps shall be constructed across the relocated east entrance so that the pedestrian ramps are perpendicular to the travel way directing pedestrians to the opposite ramp and not on an angle into the roadway, as shown on the Site Plan (Exhibit No. 81(e)).
10. Petitioner must provide 14 bike lockers in the northeast corner of the proposed garage and 3 inverted-U bike racks at the main entrance of the professional building.
11. The Community Liaison Council (CLC) shall continue to meet a minimum of two times per year, as long as this Special Exception exists. The frequency of meetings may be expanded as needed, by either Petitioner or the community. The People's Counsel of Montgomery County shall be an ex officio member of the CLC and shall facilitate meetings of the CLC. Minutes shall be taken at each

CLC meeting, and an Annual Report shall be prepared that shall include the minutes of the CLC meetings and information to indicate how the Petitioner is satisfying the conditions of this Special Exception that have been established by the Board of Appeals.

12. The CLC shall act as a forum for the Petitioner to finalize a Transportation Management Plan (TMP), with input from Maryland-National Capital Park and Planning Commission (M-NCPPC) Staff as necessary, to be submitted to and approved by the Board of Appeals prior to release of the initial building permit. The Petitioner shall also use the CLC as a forum to seek input on issues relating to construction and build-out of the project, including construction phasing and construction management (with additional input from MCDOT as necessary).
13. The Petitioner must design and construct the South Patient Tower to attenuate projected exterior noise sources to an interior noise level not to exceed 45 dBA L_{dn} . The Petitioner must comply with the County Noise Ordinance (Chapter 31B of the County Code) for onsite noise sources as they may affect offsite residential properties at all times. The Petitioner shall submit a certification to the Department of Permitting Services, with a copy to the Board of Appeals, when applying for the initial building permit that these requirements relating to internal and external noise will be met. During the construction process, the Petitioner must adhere to the "maximum allowable noise levels for construction" (Section 31B-6(a) of the County Code). The construction contract between the Petitioner and its general contractor will include provisions relating to construction activity compliance with the County Noise Ordinance.
14. There must be no construction noise audible outside of the subject site before 7 a.m. on weekdays and 9 a.m. on weekends and holidays. Trucks connected with the construction must not idle on Forest Glen Road or Dameron Drive; rather they should be admitted to on-site staging areas to await construction duties. The Petitioner must designate a noise compliance contact or contacts who will be available 24 hours/day, 7 days/week for questions and concerns regarding noise issues and/or other construction related issues during the construction process. All designated compliance contacts must have the authority to immediately halt any conduct violative of these conditions. This contact information, including available phone numbers, email addresses, and other contact information allowing for instant access, shall be provided to the community through the CLC and through a direct mailing to all persons required to receive notice of these proceedings prior to commencement of construction on the project.
15. Prior to issuance of the first building permit, the Petitioner must grant a scenic easement to M-NCPPC for recordation in the Land Records of Montgomery County, in a form and with terms approved by the Parks Department of the M-NCPPC, which reflects the language related to the scenic easement referenced on plat, as well as the conditions of the M-NCPPC as required for approval granted to the Petitioner to encroach into the easement.
16. The final signage plan approved for the property in conjunction with building permits that addresses way-finding and other signage internal to the property

shall be submitted by the Petitioner to the Board of Appeals prior to issuance of permits relative to the signage.

17. The proposed landscape buffer along Forest Glen Road, as initially planted, must provide full year-round screening of the expanded garage structure for Lots 5 through 9 on the north side of Forest Glen Road opposite the North Parking Garage. This year-round screening will be provided by the evergreen and other plantings shown on the revised Landscape Plan (Exhibit 81(a)) and the Forest Glen Landscape Buffer Sections Plan (Exhibit 79(f)), with the screening enhanced during the growing seasons through deciduous trees. Should the plantings proposed by the revised landscape plan not provide the year-round screening that has been represented by Petitioner to be in place upon initial planting, Petitioner and its consultants will take such remedial actions necessary, in consultation with the users of the aforementioned Lots 5 through 9, to provide the screening as represented.
18. All terms and conditions of the approved special exception remain in full force and effect, except as modified in the Board's order granting this modification request.
19. The number of permitted employees will remain unchanged by the instant modification.
20. Petitioner's hours of operation are 24 hours per day, seven days a week. These hours are unchanged by the instant modification.
21. The requirement of Zoning Ordinance §59-E-2.8 that a parking facility be set back from the rear property line is hereby waived, pursuant to Zoning Ordinance §59-E-4.5, solely with regard to ten additional parking spaces, which may be located east of the South Patient Tower along the fire lane access drive, adjacent to the Capital Beltway, without any setback from the rear property line.
22. Petitioner is hereby granted a variance permitting an encroachment into the 128-foot, rear-yard setback required by Zoning Ordinance §59-G-2.31(3) for a 128-foot-tall building (a 128-foot variance) and an increase in building lot coverage to 52.4 percent (a 17.4 percent variance above the 35% building lot coverage permitted in the R-60 Zone).
23. Petitioner must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the special exception premises and operate the special exception as granted herein. Petitioner shall at all times ensure that the special exception use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.

On motions by David K. Perdue, Vice-Chair, seconded by Walter S. Booth, with Carolyn J. Shawaker, Stanley B. Boyd and Catherine G. Titus, Chair, in agreement and

by Carolyn J. Shawaker, seconded by Stanley B. Boyd, with Walter S. Booth, David K. Perdue, Vice-Chair and Catherine G. Titus, Chair, in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.

Catherine G. Titus
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 18th day of September, 2009.

Katherine Freeman
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.